

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3

4 CARLOS AGUIAR  
5

vs.

C.A. NO.: 04-12011-MLW

6  
7 LIMA & CURA FISHING CORPORATION  
8  
9

10 VIDEOTAPED DEPOSITION OF DR. JENNIFER LEE,  
in the above-entitled cause, taken on behalf of the  
11 Plaintiff, at 2 Dudley Street, Providence, Rhode  
Island, 02903, before Jane F. Cormier, CSR, a Notary  
12 Public in and for the State of Rhode Island, on  
December 7th, 2005, convening at 4:00 p.m.  
13  
14  
15

16 APPEARANCES:

17 For the Plaintiff:  
LATTI & ANDERSON

18 30-31 Union Wharf  
Boston, Massachusetts 02109

19 BY: DAVID ANDERSON, ESQ.

20 For the Defendant:  
REGAN & KIELY, LLP

21 85 Devonshire Street  
Boston, Massachusetts 02109

22 BY: JOSEPH A. REGAN, ESQ.  
23  
24

1 you say that, do I still answer?  
 2 MR. REGAN: Yes.  
 3 ~~MR.~~ MR. ANDERSON: He's just sort of like,  
 4 later on we could argue about whether that was an  
 5 appropriate question. So, he is noting on the  
 6 record that, gee, I don't think that's a good  
 7 question. But you can go ahead.  
 8 A Could you restate it?  
 9 Q Yeah. We were talking about the rationale for  
 10 performing the Ray amputation, and you described  
 11 it. And I think my question was that at that  
 12 time, or prior to the Ray amputation he was  
 13 experiencing a set of symptoms which were made  
 14 worse when he actually actively used the hand; is  
 15 that correct?  
 16 MR. REGAN: Objection.  
 17 A Let me see if I actually wrote that somewhere. By  
 18 using the hand, do you mean in his job, or just in  
 19 general?  
 20 Q Just using it in everyday life. When he used it,  
 21 it was painful; was it not?  
 22 MR. REGAN: Objection.  
 23 A Yes.  
 24 Q And in addition, I believe you mentioned that by

1 removing the finger, not only would one not have  
 2 that pain, but also that he would get -- the hand  
 3 would function better with the Ray amputation; is  
 4 that correct?  
 5 MR. REGAN: Objection.  
 6 A It may function better. But yes, the finger would  
 7 not be there, and he would not have that specific  
 8 set of problems, because the finger would be gone.  
 9 Q Okay. And was the Ray amputation performed?  
 10 A Was it performed? Yes.  
 11 Q And were you involved in performing that Ray  
 12 amputation?  
 13 A Yes.  
 14 Q And did you also follow up with Mr. Aguiar  
 15 following the Ray amputation?  
 16 A I did. The surgery itself was on November 22nd,  
 17 2004, and I had seen him several times after that.  
 18 The last time I had seen him was in May of 2005.  
 19 Q And that was his second to last visit?  
 20 A As far as I know from the chart.  
 21 Q And what symptoms was he experiencing when you  
 22 last saw Mr. Aguiar?  
 23 A When I last him -- I last saw him May 27th, 2005,  
 24 and he was still in the process of having therapy.

1 He had some increase in strength and range of  
 2 motion per his history. He still complained of  
 3 some swelling when he used his hand. From  
 4 physical exam his incisions were well-healed. He  
 5 did not have any pain when I touched his incision  
 6 or over the hand area.  
 7 The patient's history says that he  
 8 complained that it was swollen. I didn't note  
 9 that on exam. And overall in terms of what you  
 10 would expect in terms of range of motion and grip  
 11 and strength, as much as you can just grossly  
 12 examine it, it seemed to be improving.  
 13 Q Okay. And then the final treatment with the hand  
 14 clinic was in September of this year?  
 15 A Yes.  
 16 Q And similar type of symptoms, somewhat improved?  
 17 A So, he was seen by Dr. Friedman, who's another  
 18 resident. He continued to complain of increase in  
 19 swelling when he used the hand, but it improves  
 20 with elevation.  
 21 MR. REGAN: Objection. Move to strike.  
 22 Q Is that consistent with --  
 23 A That's his history, so I don't know. And we don't  
 24 see them long enough to be able to assess that.

1 The person who wrote most of the note, I don't  
 2 know who that is, but all I can say is that  
 3 Dr. Friedman sort of corroborated. But it notes  
 4 on his exam that he has full range of motion and  
 5 strength. But that's not something you can  
 6 measure in this kind of setting. And he seemed to  
 7 have some amount of swelling, but I don't know who  
 8 assessed that.  
 9 Q Meaning the note indicates swelling, but it's not  
 10 clear who?  
 11 A Because initially it was talking about what he  
 12 complained of. That's different than the physical  
 13 exam itself.  
 14 Q Okay.  
 15 A So, I had seen him in May, and I know that my  
 16 physical exam might be different than whoever --  
 17 Q Okay. So, when he was last seen, he was  
 18 complaining of some swelling in the hand, and that  
 19 appears to be corroborated by the physical exam in  
 20 which it was noted mild edema in the hand.  
 21 A I guess so from the note. I can only comment on  
 22 the note.  
 23 Q I would like you to assume that at present and  
 24 pretty much for all fall, that Mr. Aguiar has



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1 experienced some mild swelling when he uses the  
 2 hand. I would also like you to assume that as  
 3 it's gotten colder this fall, he's had some mild  
 4 cold intolerance, not the degree to which he had  
 5 prior to the Ray amputation, but cold intolerance,  
 6 and that he gets occasional shooting pain when he  
 7 uses it. And that also his strength, the total  
 8 hand strength of the right is somewhat less than  
 9 his left. And I'd like you to assume that those  
 10 are the symptoms that Mr. Aguiar has been  
 11 experiencing this fall. Do you have an opinion as  
 12 to whether it's more likely than not that he will  
 13 experience these symptoms indefinitely into the  
 14 future to some degree?

15 MR. REGAN: Objection.

16 A So, he is about a year out from his surgery, and  
 17 has those symptoms.

18 Q Um-hum.

19 A The likelihood is that he probably will have those  
 20 symptoms.

21 Q Indefinitely into the future?

22 A Most likely.

23 MR. REGAN: Objection.

24 Q You're not familiar with work as a commercial

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1 fisherman, are you?

2 A Only what I've seen on television.

3 Q Okay. I would like for you just to assume that  
 4 the type of work that Mr. Aguiar was doing  
 5 involved working outdoors on a offshore commercial  
 6 fishing vessel; that these vessels go on trips  
 7 that range from six to ten days; they fish at all  
 8 times of the year; and that when they're fishing  
 9 they're working in excess of twelve hours a day,  
 10 on deck, sometimes in gloves, but many times not  
 11 with gloves, working with nets, working with  
 12 equipment both in the summer, and also in the  
 13 winter. And I also would like for you to assume  
 14 that it involves quite a bit of heavy work with  
 15 both hands, and also involves hauling stuff like  
 16 ninety pound baskets of fish and things of that  
 17 nature. Do you have an opinion, based upon that  
 18 job description, whether Mr. Aguiar ought to try  
 19 to find some other type of work?

20 MR. REGAN: Objection.

21 A With the symptoms that you said?

22 Q And also the symptoms that I described in the  
 23 second -- the question preceding that one. Do you  
 24 have an opinion as to whether Mr. Aguiar ought to

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1 try to find some alternative type of work?

2 MR. REGAN: Objection.

3 A Just from my knowledge from literature on Ray  
 4 amputation, the loss of grip strength averages  
 5 about thirty percent, which is fairly significant.  
 6 I don't know what his prior maximum ability to  
 7 carry things was, but overall, not exactly knowing  
 8 how harsh it is, from what it sounds like, he  
 9 probably should find some other job.

10 Q And how would you describe alternative type of  
 11 work in terms of mild, moderately strenuous; what  
 12 do you think?

13 MR. REGAN: Objection.

14 Q If you can -- I mean, I --

15 A I mean, I -- if he wanted to be lifting heavy  
 16 things, to go back into construction, he would  
 17 probably have to be careful, because he wouldn't  
 18 have the strength that he might have had  
 19 previously in that hand. And it is his dominant  
 20 hand. I don't know how much dexterity he's  
 21 developed. So, it's hard to say, but I would  
 22 recommend he use caution, and not get a job where  
 23 he would have to do a lot of heavy work.

24 MR. ANDERSON: I have no further

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1 questions.

2 EXAMINATION BY MR. REGAN

3 Q Dr. Lee, when were you first licensed to practice  
 4 medicine?

5 A I have a temporary license through the residency.

6 Q What do you mean by a temporary license?

7 A I am not fully licensed for the state of Rhode  
 8 Island. I get a license renewed every year to  
 9 practice as a resident.

10 Q Are you licensed to practice in any other state?

11 A No.

12 Q And with this temporary license are there  
 13 restrictions on what you can do in terms of  
 14 treatment of patients that come to the Rhode  
 15 Island Hospital?

16 A I have to have supervision. To a certain degree I  
 17 would be able to do tasks on my own, like suture  
 18 removal and things like that, where you don't need  
 19 an attending always present. But all plans with  
 20 patients, and all surgeries are supervised by an  
 21 attending.

22 Q And when will you be eligible to get a permanent  
 23 or a full fledged license or whatever you would  
 24 call it?

6 (Pages 18 to 21)



<p style="text-align: right;">Page 22</p> <p>1 A I could apply for a full license now. And it's</p> <p>2 not dependent on whether I finish my residency or</p> <p>3 not; it's essentially if I finish all of my</p> <p>4 required board tests, then I can apply. And I've</p> <p>5 been able to do that since I finished my last --</p> <p>6 it's called -- there's three steps that you have</p> <p>7 to take, three tests. So, I've already done that.</p> <p>8 Q So, what's left for you to apply to get fully</p> <p>9 licensed? Do you have take another test?</p> <p>10 A No. You just have to apply.</p> <p>11 Q Is there any part of becoming a permanent or full</p> <p>12 fledged doctor --</p> <p>13 A I'm already a doctor, medical doctor. So, that's</p> <p>14 separate. That requires graduation from medical</p> <p>15 school.</p> <p>16 Q Well, you used the term temporary license. What</p> <p>17 am I comparing it to? What does Dr. Bowen have or</p> <p>18 Dr. Friedman have that you don't have?</p> <p>19 A Dr. Friedman is also a resident, so he also has a</p> <p>20 temporary license.</p> <p>21 Q What does Dr. Bowen have?</p> <p>22 A He decided that he wanted to practice in Rhode</p> <p>23 Island, and decided to apply for a full license</p> <p>24 here, so that, he doesn't need to -- I don't</p>	<p style="text-align: right;">Page 24</p> <p>1 you were not the surgeon.</p> <p>2 A I was not the primary surgeon, no. I was an</p> <p>3 assistant.</p> <p>4 Q You weren't involved in the cutting.</p> <p>5 A I was involved in the cutting.</p> <p>6 Q And in what respect?</p> <p>7 A I was involved in skin -- some of the dissection,</p> <p>8 the bone cutting. That's part of my training.</p> <p>9 So, it's done under the supervision of Dr. Bowen,</p> <p>10 so that he can assess whether it's being done</p> <p>11 correctly.</p> <p>12 Q And I take it you're not board certified in hand</p> <p>13 surgery or hand specialty?</p> <p>14 A No.</p> <p>15 Q Is that correct?</p> <p>16 A No.</p> <p>17 Q And board certification is a status that a fully</p> <p>18 licensed doctor can apply for and take tests for</p> <p>19 in order to become board certified?</p> <p>20 A Yes. And it applies to certain specialties,</p> <p>21 because if there is some specialty where there is</p> <p>22 no organized exam, then there's no board</p> <p>23 certification.</p> <p>24 Q Is there a board certification in plastic surgery?</p>
<p style="text-align: right;">Page 23</p> <p>1 actually know if he has to renew it. It doesn't</p> <p>2 have to do with what kind of doctor you are, it</p> <p>3 doesn't have to do with your specialty; it's just</p> <p>4 whether you've completed medical school, and</p> <p>5 you've completed the tests that show you have a</p> <p>6 certain competency after medical school.</p> <p>7 Q When did you complete medical school?</p> <p>8 A 2000.</p> <p>9 Q And when did you first start working here at the</p> <p>10 Rhode Island Hospital?</p> <p>11 A 2000.</p> <p>12 Q And you described yourself as a resident. What is</p> <p>13 a resident, or what is a residency?</p> <p>14 A A residency is a training program where you learn</p> <p>15 to be a specific type of doctor. There are</p> <p>16 certain M.D.s and D.O.s who do not choose to do</p> <p>17 any training. They are still doctors. When you</p> <p>18 decide to do a certain training, you are just</p> <p>19 learning how to do that specialty.</p> <p>20 So, there are some people who do the</p> <p>21 training, and they don't even practice, but that's</p> <p>22 just their decision.</p> <p>23 Q I take it from what you've told us so far that</p> <p>24 while you were present at Mr. Aguiar's amputation</p>	<p style="text-align: right;">Page 25</p> <p>1 A There is. As well as separately in hand surgery.</p> <p>2 Q And I take it you're not board certified in</p> <p>3 plastic surgery.</p> <p>4 A No.</p> <p>5 Q And you answered my next question, which is there</p> <p>6 is a board certification in hand surgery.</p> <p>7 A Right.</p> <p>8 Q And you're not board certified as far as hand</p> <p>9 surgery is concerned.</p> <p>10 A No.</p> <p>11 Q And in your work here at the Rhode Island</p> <p>12 Hospital, do you specialize in treatment of the</p> <p>13 hand, or do you treat all plastic surgery</p> <p>14 problems?</p> <p>15 A All plastic surgery.</p> <p>16 Q And when you were testifying here today in</p> <p>17 response to Mr. Anderson's questions, were you</p> <p>18 testifying from a memory you have of actually</p> <p>19 seeing Mr. Aguiar, or is it only from reliance on</p> <p>20 your notes that you're able to answer the</p> <p>21 questions?</p> <p>22 MR. ANDERSON: I'm going to object,</p> <p>23 because it could be a combination.</p> <p>24 MR. REGAN: Let me withdraw the</p>